

In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	
TPI INTERNATIONAL)	Adversary Proceeding
AIRWAYS, INC.)	
(Chapter 11 Case <u>91-20162</u>))	Number <u>93-2006</u>
)	
<i>Debtor</i>)	
)	
)	
)	
ROBERT MALATIER LIMITED,)	
A Foreign Corporation)	
)	
<i>Plaintiff</i>)	
)	
)	
)	
v.)	
)	
TPI INTERNATIONAL)	
AIRWAYS, INC.,)	
A Florida Corporation))	
AND)	
N.M.B. NEDERLANDSCHE)	
MIDDENSTANDBANK, N.V.)	
)	
<i>Defendants</i>)	

MEMORANDUM AND ORDER

The trial of the above-captioned adversary proceeding was scheduled for

January 4, 1994, at 1:30 p.m., in Brunswick, Georgia. At the call of the calendar, counsel for the Debtor/Defendant announced that the case had been settled in consideration of payment of the sum of \$2,900.00 by the Plaintiff to the Debtor/Defendant. It was further stated at that time that an order memorializing the settlement and dismissal of the case would be submitted to the Court within two weeks. On June 20, 1994, Plaintiff filed a Motion for Status Conference and to Enforce Settlement Agreement alleging generally that, while the counsel of record had agreed upon a settlement of the case, they had been unable to agree upon the terms of the agreement and the mutual releases required to effectuate it. The Motion further alleged that counsel had continued to negotiate in good faith but that corporate representatives of the Debtor/Defendant refused to consummate the agreement on the terms as agreed upon by Debtor/Defendant's counsel.

As a result of the filing of that Motion, this Court set a hearing to consider the same on July 6, 1994. At the hearing, counsel for both parties appeared and stated that the amount of the settlement still was not in dispute but that the terms of the settlement agreement prepared by counsel for the Plaintiff deviated from that which was understood to be the agreement by the Debtor/Defendant because the proposed consent order provided that the loss for which payment was being made of a "flyaway kit" was to be considered covered under the hull portion of the insurance agreement rather than under the spares endorsement. The proposed consent order, however, specifically provided that Debtor's acknowledgement that payment was to be made under the hull of coverage was "solely with respect to the

alleged loss . . . which is the subject of this action." In other words, by the express terms of the order the parties provided that the settlement and the agreement that payment be under the hull portion would be without prejudice to the rights of TPI should there be similar litigation between these parties over the same issue. Apparently, TPI is agreeable to accepting the sum of \$2,900.00, but is unwilling to acknowledge that fact as part of the settlement. On the other hand, Plaintiff is unwilling to pay the money unless it receives that acknowledgement.

It is difficult, if not impossible, for the Court to fathom whether the issue makes any difference whatsoever or whether it is simply a matter of one party's ego or lack of understanding of the effect of the terms of the settlement getting in the way of achieving a settlement. When the parties argued their respective positions at the hearing on July 6, I ruled from the bench that if the terms of the agreement under which the money was to be paid could not be settled upon within five days, that I would reserve the right to rule on the Motion without further evidence or set the underlying case for trial. I further advised the parties that, in the event I set it for trial, I intended to award sanctions against the losing party inasmuch as the only impediment to settlement of the case is the intransigence of the parties over the language of the settlement agreement. On July 8, two days after the hearing, a call was placed to the Courtroom Deputy who administers this file, in which counsel for the parties advised that they had reached a settlement and that a consent order would be submitted by the end of the following week. That would have suggested that the

consent order should have been in hand no later than July 20, 1994. Nothing more was received from the parties with reference to the settlement until a letter dated August 2, 1994, addressed to the undersigned by William S. Orange, III, co-counsel for Debtor/Defendant in the case. That letter advised that although the parties "thought we had reached an agreement, our in-house counsel, Ms. Jean Niven, has informed Mr. Whelchel and myself that we are not authorized to settle the case under the proposed terms."

It is ambiguous whether the parties ever reached a meeting of the minds on the issue of the language of the settlement agreement. It is uncontradicted, however, that the amount of the settlement is not in issue and no one has suggested any basis for the Court to conclude that the precise terms of the settlement are prejudicial to either side since it is made expressly limited to this litigation and cannot be used in any other action or forum. I have examined the record and I can find insufficient facts from which to determine whether the Motion should be granted. Accordingly, the Motion is denied.

Because the parties have not consented to the agreement, there is no alternative for the Court but to set the matter for trial on the merits. As previously indicated, however, the reasons why the case cannot be settled are so obscure and meritless that I conclude, as I indicated at the earlier hearing, that there is a high likelihood that an award of sanctions against one party or its counsel, or both, may be appropriate at the conclusion of the trial of this case on the merits because of what appears to be a likely violation of

Bankruptcy Rule 9011 and/or 28 U.S.C. Section 1927. As a result, notice is hereby given that the Court will consolidate and rule both on the merits of this case and the question of sanctions in the same hearing. The case will therefore be set for trial at the first opportunity. A joint consolidated Pre-Trial Order IS ORDERED to be filed not later than September 20, 1994, with the limitation that all evidence at trial will be presented by live testimony.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of September, 1994.